

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

TUAN NGOC VU,

Petitioner,

v.

UNITED STATES OF AMERICA,

Defendant.

5:05-CR-0515  
5:07-CV-628  
(NAM/GJD)

**APPEARANCES**

Alexander Bunin  
Office of the Federal Public Defender  
The Clinton Exchange, 3rd Floor  
4 Clinton Square  
Syracuse, New York 13202

Glenn T. Suddaby, Esq.  
United States Attorney for the  
Northern District of New York  
100 South Clinton Street  
Syracuse, New York 13261-7198

**OF COUNSEL:**

Lisa A. Peebles, Esq.  
Asst. Public Defender

Craig A. Benedict, Esq.  
Assistant U.S. Attorney

**NORMAN A. MORDUE, Chief U.S. District Judge**

**MEMORANDUM-DECISION AND ORDER**

By Oral Order on February 2, 2008, this Court dismissed petitioner's motion pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct his sentence on the basis of alleged ineffective assistance of counsel. Specifically, petitioner sought relief from sentence on the ground that his attorney failed to file an appeal on his behalf as directed following his sentencing. The Court conducted an evidentiary hearing, pursuant to *Campusano v. United States*, 442 F.3d 770 (2d Cir. 2006), to determine whether petitioner in fact requested that his attorney file a notice of appeal on his behalf. After considering the evidence presented by petitioner and the government on this issue, the Court found that there was no credible evidence to suggest or establish that petitioner

had requested that his attorney file an appeal on his behalf.

Currently before the Court is petitioner's motion for a Certificate of Appealability. The grounds upon which petitioner seeks to appeal this Court's order are the same as those previously addressed in petitioner's § 2255 motion, that is, ineffective assistance of counsel based on Mr. Bach's alleged failure to file a requested appeal on his behalf.

This Court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Upon review of petitioner's motion and for the reasons set forth in this Court's February 2, 2008, Oral Order, the Court finds that petitioner has failed to make the required showing.

**WHEREFORE**, it is hereby

**ORDERED**, that petitioner's motion for a Certificate of Appealability is **DENIED** for the reasons set forth above.

IT IS SO ORDERED.

Dated: February 27, 2008  
Syracuse, New York

  
Norman A. Mordue  
Chief United States District Court Judge